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AUG 23 2002

OFFICE OF PETITIONS

In re Application of
Norbert Diekhans
Application No. 09/640,126
Filed: August 16, 2000
Atty Docket No. 3869/59156-083

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DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR \$1.137(a)," filed April 23, 2002, which is being treated as a petition to withdraw the holding of abandonment under \$1.181 based on nonreceipt of an Office action.

The petition under \$1.181 is GRANTED.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed July 16, 2001. The Office action set a period for reply of three (3) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned on October 17, 2001. A Notice of Abandonment was mailed on February 26, 2002.

The petition supports a conclusion that petitioner promptly filed the instant petition after determining that the instant application was abandoned. Petitioner states that the application became abandoned as a consequence of the final Office action not being received by the applicant's attorney. Petitioner specifically states that along with his former legal secretary, he reviewed the file, docket record book and computer database maintained by his firm for evidence of the final Office action, but no evidence of same was found. In support of a showing of nonreceipt, petitioner submits *inter alia* a copy of their docket record for the period of July 9, 2001 through August 9, 2001.

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

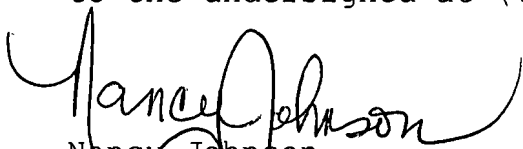
Petitioner's arguments and evidence have been considered, and found persuasive to show nonreceipt of the July 16, 2001 Office action at the correspondence address of record. Accordingly, withdrawal of the holding of abandonment for nonreceipt is warranted.

In view thereof, the holding of abandoned is hereby **WITHDRAWN**.

Since consideration of the petition under \$1.137(a) is unnecessary for the reasons cited, the petition fee (\$110) is being refunded to Deposit Account No. 08-3480, as authorized.

Accompanying the petition was an amendment in reply to the final Office action¹. The application is being returned to Technology Center 3671 for consideration of the amendment filed April 23, 2002.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Petitioner indicates that in connection with their call to the Office on or about February 11, 2002, a copy of the Notice mailed July 16, 2001 was faxed to them.